

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 04-0066**  
**Withholding Tax**  
**Responsible Officer**  
**For the Tax Period 1999-2001**

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**ISSUE**

**1. Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-8.1-5-1(b), IC 6-3-4-8(f), Indiana Department of Revenue v. Safayan 654 N.E. 2<sup>nd</sup> 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

**STATEMENT OF FACTS**

The taxpayer was the President of a corporation that did not properly remit withholding taxes to the state during the tax period 1999-2001. The Indiana Department of Revenue assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

**1. Withholding Tax-Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2<sup>nd</sup> 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit withholding taxes to the state. As the President of the corporation, the taxpayer had the

responsibility to oversee the corporation. The taxpayer failed to insure that the corporation fulfilled its financial responsibilities by remitting trust taxes to the Indiana Department of Revenue. The taxpayer had the statutory duty to remit the sales and withholding taxes due during his term as President of the corporation. Therefore, he is personally liable for the payment of those taxes not remitted to the state during that period.

### **Finding**

The taxpayer's protest is denied.

KMA/JMM/MR/05/10/02